



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

SB3012

Introduced 2/7/2014, by Sen. Heather A. Steans

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-401.5

Amends the Juvenile Court Act of 1987. Provides that an oral, written, or sign language statement of a minor who, at the time of the commission of the offense was under the age of 18 years, made as a result of a custodial interrogation conducted at a police station or other place of detention on or after January 1, 2015 is presumed to be inadmissible as evidence against the minor in any criminal proceeding, for an act that if committed by an adult would be homicide or would be driving under the influence that was the proximate cause of death of another person unless the minor was allowed to consult with and have access to counsel throughout the entire custodial interrogation.

LRB098 17224 RLC 52317 b

1 AN ACT concerning courts.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Juvenile Court Act of 1987 is amended by  
5 changing Section 5-401.5 as follows:

6 (705 ILCS 405/5-401.5)

7 Sec. 5-401.5. When statements by minor may be used.

8 (a) In this Section, "custodial interrogation" means any  
9 interrogation (i) during which a reasonable person in the  
10 subject's position would consider himself or herself to be in  
11 custody and (ii) during which a question is asked that is  
12 reasonably likely to elicit an incriminating response.

13 In this Section, "electronic recording" includes motion  
14 picture, audiotape, videotape, or digital recording.

15 In this Section, "place of detention" means a building or a  
16 police station that is a place of operation for a municipal  
17 police department or county sheriff department or other law  
18 enforcement agency at which persons are or may be held in  
19 detention in connection with criminal charges against those  
20 persons or allegations that those persons are delinquent  
21 minors.

22 (b) An oral, written, or sign language statement of a minor  
23 who, at the time of the commission of the offense was under the

1 age of 18 years, made as a result of a custodial interrogation  
2 conducted at a police station or other place of detention on or  
3 after the effective date of this amendatory Act of the 93rd  
4 General Assembly shall be presumed to be inadmissible as  
5 evidence against the minor in any criminal proceeding or  
6 juvenile court proceeding, for an act that if committed by an  
7 adult would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1,  
8 9-3, 9-3.2, or 9-3.3, of the Criminal Code of 1961 or the  
9 Criminal Code of 2012, or under clause (d)(1)(F) of Section  
10 11-501 of the Illinois Vehicle Code unless:

11 (1) an electronic recording is made of the custodial  
12 interrogation; and

13 (2) the recording is substantially accurate and not  
14 intentionally altered.

15 (b-1) An oral, written, or sign language statement of a  
16 minor who, at the time of the commission of the offense was  
17 under the age of 18 years, made as a result of a custodial  
18 interrogation conducted at a police station or other place of  
19 detention on or after January 1, 2015 is presumed to be  
20 inadmissible as evidence against the minor in any criminal  
21 proceeding, for an act that if committed by an adult would be  
22 brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or  
23 9-3.3, of the Criminal Code of 1961 or the Criminal Code of  
24 2012 or under clause (d)(1)(F) of Section 11-501 of the  
25 Illinois Vehicle Code unless the minor was allowed to consult  
26 with and have access to counsel throughout the entire custodial

1 interrogation.

2 (b-5) Under the following circumstances, an oral, written,  
3 or sign language statement of a minor who, at the time of the  
4 commission of the offense was under the age of 17 years, made  
5 as a result of a custodial interrogation conducted at a police  
6 station or other place of detention shall be presumed to be  
7 inadmissible as evidence against the minor, unless an  
8 electronic recording is made of the custodial interrogation and  
9 the recording is substantially accurate and not intentionally  
10 altered:

11 (1) in any criminal proceeding or juvenile court  
12 proceeding, for an act that if committed by an adult would  
13 be brought under Section 11-1.40 or 20-1.1 of the Criminal  
14 Code of 1961 or the Criminal Code of 2012, if the custodial  
15 interrogation was conducted on or after June 1, 2014;

16 (2) in any criminal proceeding or juvenile court  
17 proceeding, for an act that if committed by an adult would  
18 be brought under Section 10-2, 18-4, or 19-6 of the  
19 Criminal Code of 1961 or the Criminal Code of 2012, if the  
20 custodial interrogation was conducted on or after June 1,  
21 2015; and

22 (3) in any criminal proceeding or juvenile court  
23 proceeding, for an act that if committed by an adult would  
24 be brought under Section 11-1.30 or 18-2 or subsection (e)  
25 of Section 12-3.05 of the Criminal Code of 1961 or the  
26 Criminal Code of 2012, if the custodial interrogation was

1 conducted on or after June 1, 2016.

2 (b-10) If, during the course of an electronically recorded  
3 custodial interrogation conducted under this Section of a minor  
4 who, at the time of the commission of the offense was under the  
5 age of 17 years, the minor makes a statement that creates a  
6 reasonable suspicion to believe the minor has committed an act  
7 that if committed by an adult would be an offense other than an  
8 offense required to be recorded under subsection (b) or (b-5),  
9 the interrogators may, without the minor's consent, continue to  
10 record the interrogation as it relates to the other offense  
11 notwithstanding any provision of law to the contrary. Any oral,  
12 written, or sign language statement of a minor made as a result  
13 of an interrogation under this subsection shall be presumed to  
14 be inadmissible as evidence against the minor in any criminal  
15 proceeding or juvenile court proceeding, unless the recording  
16 is substantially accurate and not intentionally altered.

17 (c) Every electronic recording made under this Section must  
18 be preserved until such time as the minor's adjudication for  
19 any offense relating to the statement is final and all direct  
20 and habeas corpus appeals are exhausted, or the prosecution of  
21 such offenses is barred by law.

22 (d) If the court finds, by a preponderance of the evidence,  
23 that the minor was subjected to a custodial interrogation in  
24 violation of this Section, then any statements made by the  
25 minor during or following that non-recorded custodial  
26 interrogation, even if otherwise in compliance with this

1 Section, are presumed to be inadmissible in any criminal  
2 proceeding or juvenile court proceeding against the minor  
3 except for the purposes of impeachment.

4 (e) Nothing in this Section precludes the admission (i) of  
5 a statement made by the minor in open court in any criminal  
6 proceeding or juvenile court proceeding, before a grand jury,  
7 or at a preliminary hearing, (ii) of a statement made during a  
8 custodial interrogation that was not recorded as required by  
9 this Section because electronic recording was not feasible,  
10 (iii) of a voluntary statement, whether or not the result of a  
11 custodial interrogation, that has a bearing on the credibility  
12 of the accused as a witness, (iv) of a spontaneous statement  
13 that is not made in response to a question, (v) of a statement  
14 made after questioning that is routinely asked during the  
15 processing of the arrest of the suspect, (vi) of a statement  
16 made during a custodial interrogation by a suspect who  
17 requests, prior to making the statement, to respond to the  
18 interrogator's questions only if an electronic recording is not  
19 made of the statement, provided that an electronic recording is  
20 made of the statement of agreeing to respond to the  
21 interrogator's question, only if a recording is not made of the  
22 statement, (vii) of a statement made during a custodial  
23 interrogation that is conducted out-of-state, (viii) of a  
24 statement given in violation of subsection (b) at a time when  
25 the interrogators are unaware that a death has in fact  
26 occurred, (ix) of a statement given in violation of subsection

1 (b-5) at a time when the interrogators are unaware of facts and  
2 circumstances that would create probable cause to believe that  
3 the minor committed an act that if committed by an adult would  
4 be an offense required to be recorded under subsection (b-5),  
5 or (x) of any other statement that may be admissible under law.  
6 The State shall bear the burden of proving, by a preponderance  
7 of the evidence, that one of the exceptions described in this  
8 subsection (e) is applicable. Nothing in this Section precludes  
9 the admission of a statement, otherwise inadmissible under this  
10 Section, that is used only for impeachment and not as  
11 substantive evidence.

12 (f) The presumption of inadmissibility of a statement made  
13 by a suspect at a custodial interrogation at a police station  
14 or other place of detention may be overcome by a preponderance  
15 of the evidence that the statement was voluntarily given and is  
16 reliable, based on the totality of the circumstances.

17 (g) Any electronic recording of any statement made by a  
18 minor during a custodial interrogation that is compiled by any  
19 law enforcement agency as required by this Section for the  
20 purposes of fulfilling the requirements of this Section shall  
21 be confidential and exempt from public inspection and copying,  
22 as provided under Section 7 of the Freedom of Information Act,  
23 and the information shall not be transmitted to anyone except  
24 as needed to comply with this Section.

25 (h) A statement, admission, confession, or incriminating  
26 information made by or obtained from a minor related to the

1 instant offense, as part of any behavioral health screening,  
2 assessment, evaluation, or treatment, whether or not  
3 court-ordered, shall not be admissible as evidence against the  
4 minor on the issue of guilt only in the instant juvenile court  
5 proceeding. The provisions of this subsection (h) are in  
6 addition to and do not override any existing statutory and  
7 constitutional prohibition on the admission into evidence in  
8 delinquency proceedings of information obtained during  
9 screening, assessment, or treatment.

10 (i) The changes made to this Section by Public Act 98-61  
11 ~~this amendatory Act of the 98th General Assembly~~ apply to  
12 statements of a minor made on or after January 1, 2014 (the  
13 effective date of Public Act 98-61) ~~this amendatory Act~~.

14 (Source: P.A. 97-1150, eff. 1-25-13; 98-61, eff. 1-1-14;  
15 98-547, eff. 1-1-14; revised 9-24-13.)